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SENATE BILL 904

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

FERNANDO R. MACIAS

AN ACT

RELATING TO PROPERTY; PROVIDING PROCEDURES AND REMEDIES FOR ESTABLISHING AND ENFORCING LIENS INVOLVING MOBILE HOMES AND MOBILE HOME PARKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 47-8-3 NMSA 1978 (being Laws 1975, Chapter 38, Section 3, as amended) is amended to read:

"47-8-3. DEFINITIONS. --As used in the Uniform Owner-Resident Relations Act:

A. "abandonment" means absence of the resident from the dwelling, without notice to the owner, for one full rental period or in excess of seven days, whichever is less; providing such absence occurs only after rent for the dwelling unit is delinquent;

B. "action" includes recoupment, counterclaim, set

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1 off, suit in equity and any other proceeding in which rights are  
2 determined, including an action for possession;

3 C. "codes" includes building codes, housing codes,  
4 health and safety codes, sanitation codes and any law, ordinance  
5 or governmental regulation concerning fitness for habitation or  
6 the construction, maintenance, operation, occupancy or use of a  
7 dwelling unit;

8 D. "deposit" means an amount of currency or  
9 instrument delivered to the owner by the resident as a pledge to  
10 abide by terms and conditions of the rental agreement;

11 E. "dwelling unit" means a structure, mobile home or  
12 the part of a structure, including a hotel or motel, that is  
13 used as a home, residence or sleeping place by one person who  
14 maintains a household or by two or more persons who maintain a  
15 common household and includes a parcel of land [~~other than a~~  
16 ~~mobile home lot~~] leased by its owner for use as a site for the  
17 parking of a mobile home;

18 F. "eviction" means any action initiated by the  
19 owner to regain possession of a dwelling unit and use of the  
20 premises under terms of the Uniform Owner-Resident Relations  
21 Act;

22 G. "fair rental value" is that value that is  
23 comparable to the value established in the market place;

24 H. "good faith" means honesty in fact in the conduct  
25 of the transaction concerned as evidenced by all surrounding

1 circumstances;

2 I. "normal wear and tear" means deterioration that  
3 occurs based upon the use for which the rental unit is intended,  
4 without negligence, carelessness, accident, abuse or intentional  
5 damage of the premises, equipment or chattels of the owner by  
6 the residents or by any other person in the dwelling unit or on  
7 the premises with the resident's consent; however, uncleanliness  
8 does not constitute normal wear and tear;

9 J. "organization" includes a corporation,  
10 government, governmental subdivision or agency thereof, business  
11 trust, estate, trust, partnership or association, two or more  
12 persons having a joint or common interest or any other legal or  
13 commercial entity;

14 K. "owner" means one or more persons, jointly or  
15 severally, in whom is vested:

16 (1) all or part of the legal title to property,  
17 but shall not include the limited partner in an association  
18 regulated under the Uniform Limited Partnership Act; or

19 (2) all or part of the beneficial ownership and  
20 a right to present use and enjoyment of the premises and agents  
21 thereof and includes a mortgagee in possession and the lessors,  
22 but shall not include a person or persons, jointly or severally,  
23 who as owner leases the entire premises to a lessee of vacant  
24 land for apartment use;

25 L. "person" includes an individual, corporation,

1 entity or organization;

2 M. "premises" means facilities, facilities and  
3 appurtenances, areas and other facilities held out for use of  
4 the resident or whose use is promised to the resident  
5 coincidental with occupancy of a dwelling unit;

6 N. "rent" means payments in currency or in kind  
7 under terms and conditions of the rental agreement for use of a  
8 dwelling unit or premises, to be made to the owner by the  
9 resident, but does not include deposits;

10 O. "rental agreement" means all written agreements  
11 between an owner and resident and valid rules and regulations  
12 adopted under Section 47-8-23 NMSA 1978 embodying the terms and  
13 conditions concerning the use and occupancy of a dwelling unit  
14 or premises;

15 P. "resident" means a person entitled under a rental  
16 agreement to occupy a dwelling unit in peaceful possession to  
17 the exclusion of others and includes the owner of a mobile home  
18 renting premises, other than a lot or parcel in a mobile home  
19 park, for use as a site for the location of the mobile home;

20 Q. "roomer" means a person occupying a dwelling unit  
21 that lacks a major bathroom or kitchen facility in a structure  
22 where one or more major facilities are used in common by  
23 occupants of the dwelling units. As referred to in this  
24 subsection, "major facility", in the case of a bathroom, means  
25 toilet and either a bath or shower and, in the case of a

1 kitchen, means refrigerator, stove or sink;

2 R. "single family residence" means a structure  
3 maintained and used as a single dwelling unit. Notwithstanding  
4 that a dwelling unit shares one or more walls with another  
5 dwelling unit, it is a single family residence if it has direct  
6 access to a street or thoroughfare and shares neither heating  
7 facilities, hot water equipment nor any other essential facility  
8 or service with any other dwelling unit;

9 S. "substantial violation" means any act or series  
10 of acts that occur in the dwelling unit or on the premises by  
11 the resident or with the resident's consent and:

12 (1) is [~~considered~~] a felony under the  
13 Controlled Substances Act;

14 (2) involves a deadly weapon and is  
15 [~~considered~~] a felony under the Criminal Code;

16 (3) is [~~considered~~] assault with intent to  
17 commit a violent felony, murder, criminal sexual penetration,  
18 robbery or burglary under the Criminal Code; or

19 (4) is [~~considered~~] criminal damage to property  
20 and a felony under the Criminal Code;

21 T. "term" is the period of occupancy specified in  
22 the rental agreement; and

23 U. "transient occupancy" means occupancy of a  
24 dwelling unit for which rent is paid on less than a weekly basis  
25 or where the resident has not manifested an intent to make the

1 dwelling unit a residence or household."

2 Section 2. Section 47-10-2 NMSA 1978 (being Laws 1983,  
3 Chapter 122, Section 2, as amended) is amended to read:

4 "47-10-2. DEFINITIONS.--As used in the Mobile Home Park  
5 Act:

6 A. "landlord" or "management" means the owner or any  
7 person responsible for operating and managing a mobile home park  
8 or an agent, employee or representative authorized to act on the  
9 management's behalf in connection with matters relating to  
10 tenancy in the park;

11 B. "mobile home" means a single-family dwelling  
12 built on a permanent chassis designed for long-term residential  
13 occupancy and containing complete electrical, plumbing and  
14 sanitary facilities designed to be installed in a permanent or  
15 semipermanent manner with or without a permanent foundation,  
16 which dwelling is capable of being drawn over public highways as  
17 a unit or in sections by special permit. "Mobile home" does not  
18 include a recreational travel trailer or a recreational vehicle,  
19 as those terms are defined in Section 66-1-4.15 NMSA 1978;

20 C. "mobile home park", "trailer park" or "park"  
21 means a parcel of land used for the continuous accommodation of  
22 twelve or more occupied mobile homes and operated for the  
23 pecuniary benefit of the owner of the parcel of land, his  
24 agents, lessees or assignees. "Mobile home park" does not  
25 include mobile home subdivisions or property zoned for

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1 manufactured home subdivisions;

2 D. "mobile home space", "space", "mobile home lot"  
3 or "lot" means a parcel of land within a mobile home park  
4 designated by the management to accommodate one mobile home and  
5 its accessory buildings and to which the required sewer and  
6 utility connections are provided by the mobile home park;

7 E. "premises" means a mobile home park and existing  
8 facilities and appurtenances therein, including furniture and  
9 utilities where applicable, and grounds, areas and existing  
10 facilities held out for the use of the residents generally or  
11 the use of which is promised to the resident;

12 F. "rent" means any money or other consideration to  
13 be paid to the management for the right of use, possession and  
14 occupation of the premises;

15 G. "rental agreement" means a written agreement,  
16 including those conditions implied by law, between the  
17 management and the resident establishing the terms and  
18 conditions of a tenancy, including reasonable rules and  
19 regulations promulgated by the park management. A lease is a  
20 rental agreement;

21 H. "resident" means any person or family of such  
22 person owning a mobile home that is subject to a tenancy in a  
23 mobile home park under a rental agreement;

24 I. "tenancy" means the right of a resident to use a  
25 space or lot within a park on which to locate, maintain and

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1 occupy a mobile home, lot improvements and accessory structures  
2 for human habitation, including the use of services and  
3 facilities of the park; [and]

4 J. "utility services" means electric, gas, water or  
5 sewer services, but does not include refuse services;

6 K. "first lienholder" means a person or his  
7 successor in interest who has a security interest in a mobile  
8 home, whose interest has been perfected pursuant to the  
9 provisions of Section 66-3-201 NMSA 1978 and whose interest is  
10 prior to any other security interest in the mobile home; and

11 L. "abandoned" means absence of the resident from  
12 the mobile home, without notice to the landlord, for one full  
13 rental period or in excess of seven continuous days, whichever  
14 is less, if the absence occurs after the mobile home lot rent is  
15 delinquent."

16 Section 3. Section 47-10-9 NMSA 1978 (being Laws 1983,  
17 Chapter 122, Section 9) is amended to read:

18 "47-10-9. REMEDIES. --

19 A. Upon granting judgment for possession by the  
20 landlord in a forcible entry and detainer action, the court  
21 shall issue the writ of restitution as provided in Section  
22 47-8-46 NMSA 1978.

23 B. The notice of judgment shall state that at a  
24 specified time, not less than forty-eight hours from the entry  
25 of judgment, the sheriff will return to serve a writ of

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1 restitution and superintend the peaceful and orderly removal of  
2 the mobile home under that order of court. The notice of  
3 judgment shall also advise the mobile home owner to prepare the  
4 mobile home for removal from the premises by removing the  
5 skirting, disconnecting utilities, attaching tires and otherwise  
6 making the mobile home safe and ready for highway travel.

7 C. Should the mobile home owner fail to have the  
8 mobile home safe and ready for physical removal from the  
9 premises or should inclement weather or other unforeseen  
10 problems occur at the time specified in the notice of judgment,  
11 the landlord and the sheriff may by written agreement extend the  
12 time for the execution of the writ of restitution to allow time  
13 for the landlord to arrange to have the necessary work done or  
14 to permit the sheriff's execution of the writ of restitution at  
15 a time when weather or other conditions will make removal less  
16 hazardous to the mobile home.

17 D. If the mobile home is not removed from the  
18 landlord's land on behalf of the mobile home owner within the  
19 time permitted by the writ of restitution, the landlord and the  
20 sheriff shall have the right to take possession of the mobile  
21 home for the purposes of removal and storage. The liability of  
22 the landlord and the sheriff in ~~[such]~~ that event shall be  
23 limited to gross negligence or willful and wanton disregard of  
24 the property rights of the mobile home owner. The  
25 responsibility to prevent freezing and to prevent wind and

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1 weather damage to the mobile home lies exclusively with those  
2 persons who have a property interest in the mobile home.

3 E. Utility charges, other charges incurred by the  
4 landlord for which the resident is liable to the landlord  
5 pursuant to the provisions of a rental agreement, including  
6 amounts awarded to the landlord in an action brought pursuant to  
7 this section, rents and reasonable removal and storage charges  
8 may be paid by any party in interest. Those charges ~~[shall]~~  
9 constitute a lien ~~[which]~~ that will run with the mobile home  
10 ~~[and whoever ultimately claims the mobile home will owe that sum~~  
11 ~~to the person who paid it]~~. The lien may be foreclosed in the  
12 same manner as a landlord's lien created pursuant to Section  
13 48-3-5 NSMA 1978.

14 F. Prior to the issuance of ~~[said]~~ the writ of  
15 restitution, the court shall make a finding of fact ~~[based upon~~  
16 ~~evidence or statements of counsel]~~ that ~~[there]~~ the mobile home  
17 is or is not ~~[a security agreement on the mobile home being~~  
18 ~~subjected to the writ of restitution]~~ subject to the security  
19 interest of a first lienholder. A written statement on the  
20 mobile home resident's owner's application for tenancy ~~[with the~~  
21 ~~landlord that there is no security agreement on the mobile home]~~  
22 identifying a lienholder by name and address shall be prima  
23 facie evidence of the ~~[nonexistence]~~ existence of ~~[such security~~  
24 ~~agreement]~~ the interest of the lienholder. If the application  
25 for tenancy contains no information or states that no liens

Underscored material = new  
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1 exist, the landlord shall obtain a written title search  
2 statement from the motor vehicle division of the taxation and  
3 revenue department and the matter contained in that document  
4 shall be conclusive evidence of the existence or nonexistence of  
5 security interests in the mobile home.

6 G. ~~[In those cases where]~~ If the court finds there  
7 is a security ~~[agreement]~~ interest in favor of a first  
8 lienholder on the mobile home subject to the writ of restitution  
9 ~~[and where the holder of the security agreement can be~~  
10 ~~identified with reasonable certainty]~~ or if the mobile home has  
11 been abandoned by the resident or possession of the mobile home  
12 has been surrendered to the landlord by the resident, then, upon  
13 receipt of the writ of restitution, the [plaintiff] landlord  
14 shall [promptly inform the holder of such security agreement as  
15 to the location of the mobile home, the name of the landlord who  
16 obtained the] notify the first lienholder in writing that the  
17 landlord has obtained a writ of restitution [and the time when  
18 the mobile home will be subject to removal by the sheriff and  
19 the landlord] for the mobile home park space where the mobile  
20 home is located or that the mobile home has been abandoned or  
21 surrendered by the resident. The notice shall be provided in  
22 accordance with the provisions of Subsection J of this section  
23 and shall:

24 (1) state that an action for restitution has  
25 been filed against the resident and the effective date of a writ

1 of restitution, if issued, or the date the mobile home was  
2 abandoned or voluntarily surrendered by the resident;

3 (2) disclose the amount of the utility charges,  
4 other charges incurred by the landlord as provided in the rental  
5 agreement, rents and reasonable removal and storage charges,  
6 accruing daily rent calculated pursuant to this section, and the  
7 date upon which the resident is required to make regular  
8 payments to the landlord; and

9 (3) attach a copy of the lease and the  
10 landlord's rules and regulations that apply to the resident.

11 H. Notwithstanding the provisions of the Subsection  
12 E of this section, the landlord shall be entitled to collect  
13 from the first lienholder only the utility charges, other  
14 charges incurred by the landlord as provided in the rental  
15 agreement and rents and reasonable removal and storage charges  
16 accruing from and after the date the landlord provides the first  
17 lienholder the written notice prescribed under Subsection G of  
18 this section. The first lienholder shall notify the landlord  
19 within thirty days of receipt of the notice whether it intends  
20 to pay the rents and charges collectible under this subsection  
21 or remove the mobile home. The rents and charges due under this  
22 subsection shall be prorated to the date the mobile home is  
23 removed or the date a new lease with a new resident becomes  
24 effective, and the first lienholder shall not be liable for any  
25 rents and charges thereafter. The maximum rent payable to the

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1 landlord under this subsection is a daily rate equal to one-  
2 thirtieth of the then-current lot rental amount that would have  
3 been payable by the resident under the lease. The maximum daily  
4 rent may be increased over time in accordance with the notice  
5 requirements under the applicable provisions of the Mobile Home  
6 Park Act. The first lienholder shall have thirty days from the  
7 date notice is provided by the landlord to pay the rent and  
8 charges accruing to the notice date. Thereafter, the first  
9 lienholder shall pay the rent and charges in accordance with the  
10 resident's lease. If the first lienholder desires to remove the  
11 mobile home prior to a payment due date, the first lienholder  
12 shall pay the rent and charges accrued to the date of removal  
13 prior to removing the mobile home.

14 I. If the first lienholder fails to pay the rent and  
15 charges due as provided in Subsection H of this section, the  
16 landlord may give the first lienholder notice of the nonpayment  
17 in accordance with Section 47-10-6 NMSA 1978. If the first  
18 lienholder fails to make payment within the time period  
19 specified in the notice, the landlord may proceed against the  
20 first lienholder by exercising the remedies granted it under the  
21 Mobile Home Park Act. The landlord may also seek any other  
22 remedies to which it is entitled by law. The prevailing party  
23 in any action brought in an event to seek relief under this  
24 section, including an action for damages, is entitled to an  
25 award for reasonable attorney fees and costs incurred in the

1 suit. Notwithstanding anything in this section to the contrary,  
2 the judgment obtained in such an action, if in favor of the  
3 landlord, constitutes a lien against the mobile home having  
4 priority over the lien of the first lienholder. The lien may be  
5 foreclosed pursuant to the procedures pertaining to a landlord's  
6 lien created in Section 48-3-5 NMSA 1978.

7 J. Any notice required by this section between the  
8 first lienholder and landlord shall be in writing and either  
9 hand delivered or mailed by certified mail, return receipt  
10 requested. The notice shall be effective the date of delivery  
11 or mailing. If hand delivered, the notice shall be delivered at  
12 the principal office or place of business of the addressee  
13 during regular business hours to the person in charge of the  
14 office or place of business.

15 K. If the mobile home is sold to third parties who  
16 intend to remain in the park, they will not be allowed to reside  
17 in the mobile home unless the parties have been qualified by the  
18 landlord as residents. Until the purchasers and the landlord  
19 enter into a written lease agreement, the landlord may refuse to  
20 recognize the sale and treat any persons living in the mobile  
21 home as trespassers.

22 L. If the first lienholder has paid in full all  
23 money due under Subsection H of this section, it shall be  
24 unlawful for the landlord to refuse to allow the first  
25 lienholder to remove the mobile home. If the landlord refuses

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1 to allow the first lienholder to remove the mobile home, the  
2 landlord is liable to the first lienholder for each day the  
3 landlord unlawfully maintains possession of the mobile home, at  
4 a daily rate equal to one-thirtieth of the monthly payment  
5 required by a contract between the first lienholder and  
6 resident. In all disputes between the landlord and the first  
7 lienholder, the court shall award reasonable attorney fees and  
8 costs to the prevailing party. In the event the mobile home has  
9 not been resold within six months the of landlord providing  
10 notice pursuant to Subsection G of this section, the landlord  
11 may request the first lienholder to remove the mobile home  
12 within thirty days of the request. Notice of the request shall  
13 be given to the first lienholder in accordance with Subsection J  
14 of this section."

15 Section 4. Section 48-3-5 NMSA 1978 (being Laws 1851-1852,  
16 P. 243, as amended) is amended to read:

17 "48-3-5. LANDLORDS' LIENS. --

18 A. Landlords have a lien on the property of their  
19 tenants that remains in or about the premises rented, for the  
20 rent due by the terms of any lease or other agreement in  
21 writing, and the property shall not be removed from the premises  
22 without the consent of the landlord until the rent is paid or  
23 secured. A lien ~~shall~~ does not attach ~~where~~ if the premises  
24 rented is a dwelling unit.

25 B. For purposes of this section, "dwelling unit"

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1 means a structure, mobile home and a leased parcel of land upon  
2 which it is located, or a part of a structure that is used as a  
3 home, residence or sleeping place by one person who maintains a  
4 household or by two or more persons who maintain a common  
5 household. "

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

SB 904/a

March 3, 1997

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5 Mr. President:

6  
7 Your JUDICIARY COMMITTEE, to whom has been referred

8  
9 SENATE BILL 904

10  
11 has had it under consideration and reports same with  
12 recommendation that it DO PASS, amended as follows:

13  
14 1. On page 1, line 21, after the second comma strike the  
15 remainder of the line.

16  
17 2. On page 1, line 22, strike "period or" and after the word  
18 "seven" insert "continuous", and strike ", whichever is less".

19  
20 3. On page 8, line 12, after the second comma strike the  
21 remainder of the line.

22  
23 4. On page 8, line 13, strike "rental period or", and strike  
24 "whichever".

25 5. On page 8, line 14, strike "is less, if the" and insert in

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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lieu thereof "providing such".

Respectfully submitted,

\_\_\_\_\_  
Fernando R. Macias, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 5 For 0 Against

Yes: 5

No: None

Excused: Lopez, Sanchez, Vernon

Absent: None

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**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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**State of New Mexico  
House of Representatives**

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 15, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred  
SENATE BILL 904, as amended  
has had it under consideration and reports same with  
recommendation that it DO PASS.

Respectfully submitted,

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Thomas P. Foy, Chairman

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

Excused: Alwin, King, Luna, Mallory, Rios, Sanchez

Absent: None

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